a specific and ascertained number, the contract is void, more especially if the time of delivery is limited as it was in both these contracts. *Cold Blast Trans. Co.* v. *Kansas City Bolt and Nut Co.*, 114 Fed. 81; *Higbie* v. *Rust*, 211 Ill. 333; *Campbell* v. *American Handle Co.*, 117 Mo. App. 19. Then the majority of the courts go a step further and decide that in certain classes of cases, such as supplying articles for a business which is almost certain to need such articles, even though the exact number is not stated, yet both parties are bound, as it is not impossible to ascertain approximately the number required. *A. Klipstein & Co.* v. *Allen*, 123 Fed. 992; *Manhattan Oil Co.* v. *Richardson Lubricating Co.*, 113 Fed. 923; *Hickey* v. *O'Brien*, 123 Mich. 611. In this latter case the court said, "that the quantity which they agreed to take was to be measured by the necessity of their business, which is presupposed to continue for the time agreed." There is not a great deal of difficulty in taking this step, as it does not apparently leave the performance or non-performance of the contract in the hands of one party. Nearly all these courts have insisted, however, that this rule should apply only in cases where it is hard or impossible to ascertain beforehand the exact amount of goods to be furnished. They also say that the parties must have done everything in their power to make the contract as definite and certain as the situation would permit. As is said in the leading case of *Wells* v. *Alexander*, 130 N. Y. 642, "while at the date of agreement the quantity was indefinite, it was, nevertheless, determinable by its terms, and, therefore, certain." See also, *National Furnace Co.* v. *Keystone Mfg. Co.*, 110 Ill. 427; *East* v. *Cayuga Lake Ice Co.*, 21 N. Y. Supp. 887; *Burgess Fibre Co.* v. *Bloomfield*, 180 Mass. 283. Applying this more liberal rule it would seem that the Kentucky case is at least carrying it to the limit as there are no facts to show that the parties did not know how many ties they would need, nor had they made any very great efforts to make it as certain as possible, as is demanded by the courts adopting this rule. In the Missouri case, on the other hand, the parties had made far greater efforts and yet the court decided that the obligation was not mutual. L. C. McC.

CONSTITUTIONALITY OF COMPULSORY WORKMEN'S COMPENSATION STATUTES. —The recently enacted New York Workmen's Compensation Act (Chapter 816, Laws of New York, 1913) which became fully effective July 1, 1914, is a compulsory law. By this is meant that an employer of labor coming within the classifications set forth in Section 2 of the statute has no alternative but to accept its provisions. There is no such thing as electing to come or not to come in, although by section eleven of article two, an *employe* accidentally injured in the course of his employment, may in certain circumstances elect between a suit at law (in which the defendant, his employer, is not permitted to interpose any of the three affirmative defenses) and compensation under the statute.

The New York statute, therefore, may be taken as a fair type of law based squarely on the power of a legislature to pass a compulsory Workmen's Compensation Act under the police power of the state.

It is provided in Section 10 of Article 2 that the statutory liability shall attach "without regard to fault." We are thus brought face to face with the case of *Ives* v. *South Buffalo Ry. Co.*, 201 N. Y. 271, 94 N. E. 431, decided by the Court of Appeals in March, 1911. This case held the first New York Workmen's Compensation Law (Chapter 674, Laws of 1910—Sec. 130) unconstitutional. The first law, while less elaborate, proceeded upon precisely the same economic basis as the present law. It specified certain occupations in which an employer became, upon the happening of an accident "arising out of and in the course of the employment" liable for the payment of compensation. The law was compulsory as to persons engaged in the specified occupations.

To avoid the objections held by the Court of Appeals in the *Ives* case to be fatal, the people of the State of New York in 1913 changed their constitution to permit of the passage by the Legislature of the present law.

Is this sufficient to give complete validity to the statute?

The opinion in the *Ives* case, written by Justice WERNER, holds that the legislative act in taking away certain rights from an employer, specifically the right to interpose the assumption of risk defense, is in violation of Section 6, Article 1, of the New York Constitution, and of the 14th amendment to the Federal constitution guaranteeing all persons against the deprivation of life, liberty or property without due process of law.

It is significant that throughout the lengthy opinion the federal and state constitutional provisions are referred to interchangeably, giving rise to the conclusion that the court believed both to be involved in an equal degree.

It is true that in the concluding paragraph of his opinion, Justice WERNER remarks in connection with the cases of *Noble State Bank* v. *Haskell*, 219 U. S. 104, 31 Sup. Ct. 186, and *Assaria State Bank* v. *Dolly*, 219 U. S. 121, 31 Sup. Ct. 189, urged in support of the validity of the act, that in the Court's view of the constitution of *New York* the statute is void. It is equally true that Chief Justice CULLEN, in his concurring opinion, holds that "the decision in the *Noble Bank* case is not controlling upon this court in the construction of the constitution of our own state."

The theory that the court deliberately ignored the decisions of the Supreme Court of the United States, however, is not supported by the text of either opinion. On the contrary, it seems clear that the court did not regard its decision as antagonistic to the decisions above referred to.

That the Fourteenth Amendment to the Federal constitution is by its terms binding upon the states, is of course not open to question. It follows that a state court should apply, as the New York Court did in the *Ives* decision, the provisions of the Federal constitution, where such provisions relate to the states, precisely as it would a similar provision in the constitution of its own state. (*In re Spangler*, 11 Mich. 298; *Romine* v. *State*, 7 Wash. 215, 34 Pac. 924; *Ableman* v. *Booth*, 11 Wis. 498.)

If the foregoing be sound, will not the Court of Appeals, when the constitutionality of the present law is before it, be forced to declare it a transgression, not of the state constitution, for that has been extended to meet the situation, but of the Fourteenth Amendment to the constitution of the

nation? Unless its views have changed materially since its decision in the *Ives* case, which decision was unanimous as to the life, liberty and property doctrine, it is unquestionably the duty of the court so to hold.

Assuming that the Court of Appeals will so hold, then the movement to reform the law relating to industrial accidents in the most populous state in the Union will be exactly what it was before the appointment of the Wainwright Commission in 1909, and "the plan for the beneficent reformation of a branch of our jurisprudence in which, it may be conceded, reform is a consummation devoutly to be wished," will have failed, temporarily at least, in the state of New York, and in the other states which have enacted similar statutes. The quoted lines are from Justice WERNER'S opinion in the *Ives* case.

If the New York court, however, impelled "by the prevailing morality or strong and preponderant opinion" referred to in the *Noble Bank* case, should declare the statute valid, a square case can be presented by writ of error for the Supreme Court of the United States to pass upon the validity of a *compulsory* State Workmen's Compensation Law.

It should be noted in this connection that the personnel of the court has greatly changed since the *Ives* decision. Chief Justice CULLEN has been succeeded by Justice BARTLETT, Justice GRAY is no longer a member, and Justices EMORY A. CHASE, NATHAN L. MILLER and BENJAMIN N. CARDOZO, of the Supreme Court are at present serving as Associate Justices of the Court of Appeals. Associate Justices HOGAN and CUDDEBACK have assumed office since the *Ives* decision, replacing Justices HAIGHT and VANN. Justice HISCOCK, of the present court, was a member when the *Ives* decision was handed down, but took no part in it.

Other cases passing on the constitutionality of compulsory workmen's compensation laws are necessarily scarce. Perhaps the most important is that of *State, ex. rel. Davis-Smith Co.* v. *Clausen, State Auditor,* 65 Wash. 156, 117 Pac. 1101, in which the Supreme Court of Washington, in September, 1911, reached a conclusion contrary to that of the New York Court on a state of facts involving the same economic principle, as the Washington Court itself states at page 1120 of the Pacific Reporter. It is interesting to note that this decision has had the approval of the District Court of the Western District of Washington in *Stoll* v. *Pacific Coast S. S. Co.,* 205 Fed. 169, in which there is an exhaustive opinion by Judge CUSHMAN. This seems to be the only case in which a federal court has passed on the question.

The Ohio case of *State ex. rel. Yaple* v. *Creamer, State Treasurer,* 85 Ohio St. 349, 97 N. E. 602, arose under the Ohio statute before the amendment making it compulsory. This case was decided by the Supreme Court of Ohio in February, 1912, the Act being held valid. The same type of statute (i. e., elective) was involved in the case of *Jeffery Mfg. Co.* v. *Blagg,* 235 U. S. 571, decided by the United States Supreme Court in January, 1915.

The Miners Act of Montana, passed in 1909, was declared unconstitutional in *Cunningham* v. *Northwest Improvement Co.,* 44 Mont. 108, 119 Pac. 554, on the narrow ground that it permitted an employe to elect after the injury.

The first compensation statute passed in this country, that of Maryland, was declared unconstitutional by the Baltimore Court of Common Pleas on the ground that it vested judicial powers in the Insurance Commissioner. The decision, which was not appealed from, is not officially reported, but can be found in the QUARTERLY JOURNAL OF ECONOMICS, issues of August, 1902, p. 591, and February, 1905, p. 320. The case is that of *Franklin* v. *United Railways & Elec. Co.*

The Kentucky statute, held invalid in *Kentucky State Journal Co.* v. *Workmen's Compensation Board*, 170 S. W. 1166 (affirmed 172 S. W. 674) is elective in form as to employer and employe.

The Massachusetts statute, held constitutional in *Opinion of Justices*, 209 Mass. 607, 96 N. E. 308, and in *Young* v. *Duncan*, 106 N. E. 1; the original Illinois statute, held constitutional in *Debeikis* v. *Link-Belt Company*, 261 Ill. 454, *Crooks* v. *Tazwell Coal Company*, 263 Ill. 343, and *Dietz* v. *Big Muddy Coal & Iron Company*, 263 Ill. 480; the Kansas statute, held constitutional in *Shade* v. *Ash Grove Lime & Portland Cement Company*, 139 Pac. 1193 (affirmed 144 Pac. 249); the Minnesota statute, held constitutional in *Matheson* v. *Minneapolis Street Railway Company*, 126 Minn. 286, 148 N. W. 71, and *State ex. rel. Nelson-Spelliscy Company* v. *District Court of Meeker County*, 150 N. W. 623; the New Jersey statute, held constitutional in *Sexton* v. *Newark District Telephone Company*, 34 N. J. L. 368, 86 Atl. 451 (affirmed 91 Atl. 1070), *Troth* v. *Millville Bottle Works*, 91 Atl. 1031, and *Huyett* v. *Pennsylvania R. R. Co.*, 92 Atl. 58; the Texas statute, held constitutional in *Memphis Cotton Oil Company* v. *Tolberd*, 171 S. W. 309; the Wisconsin statute, held constitutional in *Borgnis* v. *Falk Company*, 147 Wis. 327, 133 N. W. 209, are all elective in their nature.

In conclusion it may be observed that while the Supreme Court of the United States, in second *Employers' Liability Cases*, 223 U. S. 1, 32 Sup. Ct. 169. laid down an extremely broad rule of interpretation of statutes drawn under the police power, there is a vital distinction between the Federal Employer's Liability Act of 1908, which was before the court, and a compulsory Workmen's Compensation Act. The distinction is that the Federal Act, while greatly changing the rules of the common law, does not permit of recovery against an employer unless there is some manner and degree of fault on his part; whereas in a true compulsory Workmen's Compensation Law, fault plays no part.

RUSSELL B. JAMES.

AMENDMENT OF JUDGMENT AND RECORD OF JUDGMENT.—The power of the court to amend its judgment came into question in the late case of *People* v. *Petit* (Ill. 1915) 107 N. E. 830. Abbreviated entries of the judgment in the case appeared in the minute book of the judge's minute clerk, in the docket kept by the clerk, and on the wrapper files of the case, but the judgment was not entered in the court record book. An execution on the judgment was issued after the term against the defendant, and thereupon the defendant made a motion to expunge the entries of the clerk. Upon the filing of the motion the judge issued an order that the execution be stayed and that the clerk spread upon the record no further orders in the case without